IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.18098 of 2001,
and W.P.Nos. 3415, 10561, 13007, 16912 of 2003

W.P.No.18098 of 2001

Thoothukudi District Electricity Board
Pensioners' Association (Regn.No.51/98)
rep. by its General Secretary
R.Subramanian (Pottu)
No.105-A, East Ranganathapuram Street
Thoothukudi-628 002. .. Petitioner

-Vs-

1. The Government of Tamilnadu
rep. by its Secretary
Energy Department
Fort St. George
Chennai-9.

2. The Chairman
Tamilnadu Electricity Board
Chennai-2. .. Respondents

and batch cases.

PRAYER: Petitions under Article 226 of the Constitution of India for issue of a writ of Mandamus as stated therein.

For Petitioners : Mr.A.L.Namasivayam
in WP:18098/2001
3415,10561,13007
of 2003

For Petitioners : Mr.Peppin Fernando
in WP:16912/2003

For 1st respondent : Mr.M.S.Palanisamy
in all W.Ps. Addl. Government Pleader
For 2nd respondent : Mr.V.Radhakrishnan
in all W.Ps.

:ORDER

The petitioners in these writ petitions are former employees of the second respondent/Board, whose pensionary benefits are governed under the provisions of the Tamilnadu Electricity Board Liberalised Pension Regulations, 1960 (for brevity "the Regulations").

2. Regulation 9 of the said Regulations, as amended by the second respondent/Board's proceedings dated 17.2.1995 reads as follows:
"9. Saving:

i) No provision in the Tamilnadu Pension Rules and Tamilnadu Pension Rules, 1978, shall, so far as it is inconsistent within any of the provisions of these regulations have any effect.

ii) Save as otherwise provided in these regulations, the provisions in these regulations, shall be in addition to and not in derogation of the provisions in the Tamilnadu Pension Rules and Tamilnadu Pension Rules, 1978, as amended from time to time by the Government of Tamilnadu."

3. The Government, by G.O.Ms.No.272, Finance (Pension) Department, dated 15.6.1998 treated the dearness allowance as pay for the purpose of pensionary benefits, of course by giving effect to the orders of the Tamilnadu Administrative Tribunal dated 6.5.1996 made in O.A.Nos.2 227 and 4953 of 1992. The relevant portion of the said Government Order dated 15.6.1998 reads as follows:

"4. The Government have therefore decided to implement the orders passed by the Tribunal in O.A.Nos.2227/1992 and 4953/1992. Accordingly, they direct that the Dearness Allowance/Additional Dearness Allowance sanctioned from time to time and actually drawn shall be treated as dearness pay for calculation of pensionary benefits, in respect of those who retired/died during the period between 1.4.1979 to 30.9.198 7. The Government also direct that in the case of those retired during the period between 1.10.1987 to 30.6.1988 the Dearness Allowance and Additional Dearness Allowance sanctioned from time to time upto 30 .9.1987 and actually drawn shall be allowed as Dearness Pay for the entire 10 months preceding retirement for computing average emoluments for the calculation of pensionary benefits.

5. Each pensioner shall apply for recomputation of their original pension at the time of retirement in prescribed form (Annexure) to the Accountant General through the pension disbursing authority. In respect of pensioners who are getting payment outside the State, such pensioners have to send the application to the Accountant General (Accounts & Entitlements) Chennai through the Treasury Officer/Accountant General concerned for revision. In the case of pensioners who are getting payment through Public Sector Banks, they have to send the application to the Accountant General through the Link Branch/Treasury Officer.

6. The recomputation of pension in terms of these order shall be made

as detailed below:

Details of Revision
Authority by whom the pension is to be revised
1.Revision of Original Pension at the time of retirement with reference to this order.
Accountant General
2.Revised Pension from 1.10.1979 with reference to G.O.Ms.No.397, Finance (Pension), dated 14.6.1984
a) If opted for ready reckoner previously. The Treasury Officer/ Sub-Treasury Officer, Pension Pay Officer, Chennai.

b) If opted for actual calculation Accountant General (Accounts & Entitlements), Chennai.
3.Revised pension from 1.10.1979 with reference to G.O.Ms.No.742, Finance (Pension), dated 25.10.1988
The Treasury Officer/ Sub-Treasury Officer/Pension Pay Officer, Chennai
4.Revised pension from 1.10.1984 with reference to G.O.Ms.No.562, Finance (Pay Commission), dated 1.10.1984
The Treasury Officer/ Sub-Treasury Officer/Pension Pay Officer, Chennai
5.Revised pension from 1.6.1988 with reference to G.O.Ms.No.810, Finance (Pay Commission), dated 9.8.1989
The Treasury Officer/ Sub-Treasury Officer/Pension Pay Officer, Chennai
6.Revised pension from 1.1.1996 with reference to G.O.Ms.No.174, Finance, dated 21.4.1998
- do - "

4. By a settlement dated 8.7.1998, entered under Section 18(1) of the Industrial Disputes Act, 1947 between the second respondent/Board and its workmen, the second respondent/Board agreed that the revised pension scheme of

the Government of Tamilnadu and any amendments thereon from time to time would apply to the pensioners of the second respondent/Board, as per Clause 15(iii) of the said settlement dated 8.7.1998.

5. Alleging that the second respondent/Board, in spite of the said settlement dated 8.7.1998 entered under Section 18(1) of the Industrial Disputes Act, 1947, did not give effect to the amendments made by the Government of Tamilnadu vide G.O.Ms.No.272, Finance (Pension) Department, dated 15.6.1998, the petitioners approached this Court seeking a direction to the respondents to revise the pension to the petitioners by implementing G.O.Ms.No.272, Finance (Pension) Department, dated 15.6.1998.

6. After hearing Mr.A.L.Namasivayam and Mr.Peppin Fernando, learned counsel for the petitioners and Mr.V.Radhakrishnan, learned counsel for the second respondent/Board, I am of the firm opinion that in view of Clause 15(iii) of the settlement dated 8.7.1998, the benefits conferred under G.O.Ms.No.272, Finance (Pension) Department, dated 15.6 .1998 have to be read into the pensionary benefits conferred under the provisions of the Regulations, and consequently, the petitioners are entitled for the benefit of G.O.Ms.No.272, Finance (Pension) Department, dated 15.6.1998, as certain

additional benefits are provided to the pensioners in the said Government order and the said benefits are not inconsistent to any of the provisions of the Regulations.

7. That apart, pension being a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in the lurch, the employer, viz., respondent/ Board is expected to take a liberalised approach in giving effect to the said G.O.Ms.No. 272, Finance (Pension) Department, dated 15.6.1998 providing additional benefits to the pensioners.

8. Under such circumstances, suffice it to direct the second respondent/Board to give effect to the G.O.Ms.No.272, Finance (Pension) Department, dated 15.6.1998 by passing necessary proceedings within thirty days from the date of receipt of copy of this order, and the arrears of the benefits payable to the petitioners shall be settled in two quarterly installments.

These writ petitions are ordered accordingly. No costs.

Index : Yes
Internet : Yes

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To:

1. The Government of Tamilnadu
rep. by its Secretary
Energy Department
Fort St. George
Chennai-9.

2. The Chairman
Tamilnadu Electricity Board
Chennai-2.